

HOUSE BILL 1622

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 35,  
relative to trusts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-15-103 is amended by deleting subdivision (10) in its entirety and by substituting instead the following:

(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

- (A) Exercisable by a trustee and limited by an ascertainable standard; or
- (B) Exercisable by another person only.

SECTION 2. Tennessee Code Annotated, Section 35-15-103 is amended in subdivision (12) by inserting between the word "who" and the "comma" the words "assuming the nonexercise of all powers of appointment and the nonoccurrence of any event not reasonably expected to occur"

SECTION 3. Tennessee Code Annotated, Section 35-15-103 is amended by adding a new subdivision (21) as follows:

(21) "Ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of sections 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2004, or as later amended.

SECTION 4. Tennessee Code Annotated, Section 35-15-105 is amended in subdivision (b)(2) by inserting between the words "the" and "purposes" the words "terms and", and is further amended by inserting between the word "trust" and the "semicolon" the words "and the interests of the beneficiaries".

SECTION 5. Tennessee Code Annotated, Section 35-15-105 is amended in subdivision (b)(4) by deleting the words “of the court”.

SECTION 6. Tennessee Code Annotated, Section 35-15-110 is amended by deleting subdivision (a) in its entirety and by substituting the following:

(a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this Tennessee Uniform Trust Code if the charitable organization, on the date the charitable organization’s qualification is being determined:

(1) Is a distributee or a permissible distributee of trust income or principal;

(2) Would be a distributee or a permissible distributee of trust income or principal if the interests of other distributees or permissible distributees then receiving or eligible to receive distributions terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or a permissible distributee of trust income or principal if the trust terminated on that date.

SECTION 7. Tennessee Code Annotated, Section 35-15-111 is amended in subdivision (b) by deleting the words “(c), interested persons” and substituting the words “(b), the trustee and the qualified beneficiaries”.

SECTION 8. Tennessee Code Annotated, Section 35-15-111 is amended in subdivision (e) by deleting the words “Any interested person” at the beginning of the subdivision and substituting the words “Any qualified beneficiary or trustee”.

SECTION 9. Tennessee Code Annotated, Section 35-15-111 is amended by deleting subdivision (a) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 35-15-301 is amended by adding a new subdivision (d) as follows:

(d) A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under § 35-15-411(a).

SECTION 11. Tennessee Code Annotated, Section 35-15-303 is amended in subdivision (6) by deleting the word “parent” and inserting instead the word “person” and is further amended by deleting the word “parent’s” and inserting instead the word “person’s” and is further amended by deleting the word “child” both times it appears and inserting instead the word “descendant”.

SECTION 12. Tennessee Code Annotated, Section 35-15-303 is amended in subdivision (7) by inserting between the words “settlor” and “to” the words “in the trust instrument or in a writing delivered to the trustee”.

SECTION 13. Tennessee Code Annotated, Section 35-15-408 is amended in subdivision (a) by deleting the language “twenty-one (21)” and by substituting the language “ninety (90)”.

SECTION 14. Tennessee Code Annotated, Section 35-15-409 is amended in subdivision (1) by deleting the language “twenty-one (21)” and by substituting the language “ninety (90)”.

SECTION 15. Tennessee Code Annotated, Section 35-15-411 is amended in subdivision (a) by inserting the word “qualified” between the words “all” and “beneficiaries” in the first sentence and is further amended by deleting the second sentence in its entirety.

SECTION 16. Tennessee Code Annotated, Section 35-15-411 is amended in subdivision (b) by inserting the word “qualified” between the words “the” and “beneficiaries” both places such language appears.

SECTION 17. Tennessee Code Annotated, Section 35-15-411 is amended in subdivision (c) by inserting the word “qualified” between the words “the” and “beneficiaries”.

SECTION 18. Tennessee Code Annotated, Section 35-15-411 is amended in subdivision (d) by inserting the word “qualified” between the words “the” and “beneficiaries” in subdivision (d) and subdivision (d)(1), and is further amended by inserting the word “qualified” between the words “a” and “beneficiary” where it appears in subdivision (d)(2).

SECTION 19. Tennessee Code Annotated, Section 35-15-411 is amended by adding the following new subdivision (f):

(f) Notwithstanding subsection (a), the trustee may seek court approval of a modification or termination.

SECTION 20. Tennessee Code Annotated, Section 35-15-417 is amended by adding the following sentence to the end of the section:

If the trusts to be combined or divided have different trustees, the trustees may negotiate the terms of the combined or divided trusts, including which trust or trusts will be the surviving trust or trusts, who will be the trustee or trustees of the surviving trust or trusts and any other matter relating to the operation of the surviving trust or trusts.

SECTION 21. Tennessee Code Annotated, Section 35-15-501 is amended by deleting the words “protected by” and by substituting instead the words “subject to” in the first sentence.

SECTION 22. Tennessee Code Annotated, Section 35-15-504 is amended by adding the following new subdivision (c):

(c) If the trustee’s or co-trustee’s discretion to make distributions for the trustee’s or co-trustee’s own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor’s claim were the beneficiary not acting as trustee or co-trustee.

SECTION 23. Tennessee Code Annotated, Section 35-15-505 is amended by deleting subdivision (a)(3) in its entirety and by substituting instead the following:

(a)(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate and the expenses of the settlor's funeral and disposal of remains. With respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate any claim of a creditor which would be barred against the fiduciary of a settlor's estate, the estate of the settlor, or any creditor or beneficiary of the settlor's estate shall be barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the creditors and beneficiaries of the trust. The provisions of § 30-2-317(a) detailing the priority of payment of claims, expenses, and taxes from the probate estate of a decedent shall apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or creditor or taxing authority of the settlor's estate have perfected their right to collect from the settlor's revocable trust.

SECTION 24. Tennessee Code Annotated, Section 35-15-505 is amended by adding the following new subdivision (c):

(c) For purposes of paragraph (a)(2) of this section, the power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income which are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee pursuant to such authority, shall not be considered an amount which may be distributed to or for the settlor's benefit.

SECTION 25. Tennessee Code Annotated, Section 35-15-506 is amended by designating the existing language as subdivision (b) and by adding the following new subdivision (a):

(a) In this section, “mandatory distribution” means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee’s discretion even if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

SECTION 26. Tennessee Code Annotated, Section 35-15-704 is amended in subdivision (d)(2) by deleting the words “concur in the selection” between the word “general” and the “semicolon” and by substituting the words “does not affirmatively object within thirty (30) days of receipt of notice of the person selected”.

SECTION 27. Tennessee Code Annotated, Section 35-15-707 is amended in subdivision (b) by deleting the words “proceed expeditiously to” between the words “shall” and “deliver” and by substituting the words “within a reasonable time”.

SECTION 28. Tennessee Code Annotated, Section 35-15-813 is amended by deleting subdivision (a) in its entirety and by substituting the following:

(a)

(1) A trustee shall keep the beneficiaries of the trust who are current mandatory or permissible distributees of trust income or principal or both reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary’s request for

information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

SECTION 29. Tennessee Code Annotated, Section 35-15-813 is amended in subdivision (b) by deleting the words and punctuation “Unless the settlor directs otherwise in a writing delivered to the trustee,”.

SECTION 30. Tennessee Code Annotated, Section 35-15-813 is amended by adding the following new subdivisions (e) and (f):

(e) The provisions of subsections (a) and (b) above shall not apply to the extent that the terms of the trust provide otherwise or the settlor of the trust directs otherwise in a writing delivered to the trustee.

(f) Subsections (a)(1) and (b) do not apply to a trust created under a trust agreement that became irrevocable before July 1, 2004, and trust law in effect prior to July 1, 2004, regarding the subject matter of these subsections shall continue to apply to those trusts.

SECTION 31. Tennessee Code Annotated, Section 35-15-814 is amended in subdivision (b)(1) by deleting the words between the word “standard” and the “semicolon”.

SECTION 32. Tennessee Code Annotated, Section 35-15-1013 is amended in subdivision (a) by deleting the words “in the form of a sworn declaration” and is further amended by inserting the words “and attested by a notary public” between the language “subdivision (a)(5)” and the word “and”.

SECTION 33. The Tennessee Code Commission is requested to publish in the Tennessee Code Annotated any modifications to the revised official comments that are filed with the executive secretary of the Tennessee Code Commission within 30 days of the enactment of this act.

SECTION 34. This act shall take effect upon becoming law, the public welfare requiring it.